

Response to “The Diagnostic Issue”

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One aspect of cases involving civil commitment of sexually violent predators is to distinguish a sexually violent predator from a typical recidivist. I recommend that this be done on a case-by-case basis without any a priori requirements that a person meet criteria by a certain type of diagnosis.

I appreciate the opportunity to respond to “The Diagnostic Issue of Antisocial Personality Disorder in Civil Commitment Proceedings” (Cauley, (2007), this issue). I will be brief, noting that I am responding to an article that was a response to DeClue (2006), which was a response to Vognsen and Phenix (2004), which was a response to Sreenivasan, Weinberger, and Garrick (2003), which was prompted by this sentence in the U.S. Supreme Court case *Kansas v. Crane* (2002, p. 413): “The psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sex offender whose serious mental

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illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case."

In *Crane*, the Court did not specify how states must narrow the class of persons eligible for confinement under the various sexually violent predator acts. Specifically, the Court chose not to define which psychiatric illnesses could qualify a person for consideration for civil commitment as a sexually violent predator (SVP) and which could not. In *Crane*, the Court left it to the states to define "mental abnormality or personality disorder," and at least some of the states have chosen not to use a more specific definition in the SVP statutes.

Sreenivasan et al. (2003) do not recommend an *a priori* limitation of diagnostic categories. Vognsen and Phenix (2004, p. 442) do, writing that "a diagnosis of Antisocial Personality Disorder alone is not enough" to recommend civil commitment as an SVP. I agreed with Sreenivasan et al. on this point, and Cauley (this issue) agrees with Vognsen and Phenix: "It can hardly be imagined that an offender would *not have* enough history as a sex offender to receive a diagnosis of a paraphilia, and yet *have* enough of a history as a sex offender to be viewed as a sexually violent predator."

After carefully reviewing Cauley's article, I continue to see no reason for a psychologist to make a categorical decision that has been deliberately eschewed by the U.S. Supreme Court and several state legislatures. On any given case I might agree or disagree with Cauley about whether a particular respondent meets criteria for civil commitment, but in considering the facts of a case I will use statutory and case law to define the criteria for civil commitment. Still, "I see nothing conceptually inconsistent with using a diagnosis of Antisocial Personality Disorder as one—or the sole—qualifying disorder for determining whether a person meets criteria for civil commitment as a sexually violent predator. On a case-by-case basis, the question for the trier of fact is

whether a particular person meets the legal criteria in the relevant legal jurisdiction” (DeClue, 2006, p. 500).

Some (presumably including Cauley, Vognsen, and Phenix) might recommend that a legislature define “mental abnormality or personality disorder” more specifically or more narrowly, or that courts interpret the phrase more specifically or more narrowly. Others (I, and presumably Sreenivasan and colleagues) would not recommend a more narrow definition or interpretation. If some courts and/or legislatures more specifically or more narrowly define “mental abnormality or personality disorder,” then mental-health professionals in those jurisdictions should, of course, use that narrowed or specific definition in considering whether a particular person meets criteria for civil commitment as defined by the legislature and interpreted by the courts. But in jurisdictions where “mental abnormality or personality disorder” has not been narrowed or otherwise delimited by the legislature or the courts, mental-health professionals should consider, on a case-by-case basis, whether a particular person meets the legal criteria in the relevant legal jurisdiction.

- References
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